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Canada. Natural Resources, Standing
Committee on (Senate), 1959
Second Session—Twenty-fourth Parliament
1959

THE SENATE OF CANADA



PROCEEDINGS

OF THE

STANDING COMMITTEE

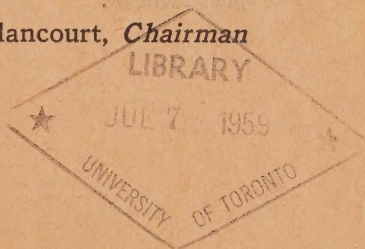
ON

NATURAL RESOURCES

To whom was referred the Bill (C-49), intituled: "An Act to provide for the Establishment of a National Energy Board."

(C-49)
The Honourable Cyrille Vaillancourt, *Chairman*

No. 1



TUESDAY, JUNE 23, 1959

WITNESSES:

Mr. Douglas M. Fraser, Director, Energy Studies Branch, Department of Trade and Commerce;

Mr. Robert Burgess, barrister-at-law, Ottawa, Ontario;

Mr. E. A. Driedger, Assistant Deputy Minister of Justice.

THE QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1959

THE STANDING COMMITTEE ON
NATURAL RESOURCES

The Honourable CYRILLE VAILLANCOURT, Chairman
The Honourable Senators

*Aseltine	Dupuis	McLean
Barbour	Emerson	Methot
Basha	Farquhar	Paterson
Beaubien	Fraser	Pearson
Bois	Gladstone	Petten
Bouffard	Haig	Power
Buchanan	Hayden	Raymond
Burchill	Higgins	Stambaugh
Cameron	Horner	Taylor (<i>Norfolk</i>)
Comeau	Kinley	Taylor (<i>Westmorland</i>)
Crerar	*Macdonald	Turgeon
Davies	McDonald	Vaillancourt
Dessureault	McKeen	Vien
		Wood—40

(Quorum 9)

**ex officio* member.

ORDER OF REFERENCE

Extract from the Minutes of Proceedings of the Senate for Wednesday, June 17th, 1959.

Pursuant to the Order of the Day, the Senate resumed the adjourned debate on the motion of the Honourable Senator Thorvaldson, seconded by the Honourable Senator Aseltine, for second reading of the Bill C-49, intituled: "An Act to provide for the Establishment of a National Energy Board".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Thorvaldson moved, seconded by the Honourable Senator Pearson, that the Bill be referred to the Standing Committee on Natural Resources.

The question being put on the motion, it was—

Resolved in the affirmative.

J. F. MACNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

TUESDAY, June 23, 1959.

Pursuant to adjournment and notice the Standing Committee on Natural Resources met this day at 2.00 P.M.

Present: The Honourable Senators: Vaillancourt, *Chairman*; Aseltine, Buchanan, Burchill, Gladstone, Haig, Higgins, Horner, McDonald, Pearson and Taylor (*Westmorland*).—11.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel; the Official Reporters of the Senate.

Bill C-49, An Act to provide for the Establishment of a National Energy Board, was read and considered clause by clause, to wit; clauses 1 to 49 were passed with the exception of clauses 40, 41 and 42, which were postponed for further consideration.

Heard in explanation of the Bill were: Mr. Douglas M. Fraser, Director, Energy Studies Branch, Department of Trade and Commerce; Mr. Robert Burgess, barrister-at-law, Ottawa, Ontario; Mr. E. A. Driedger, Assistant Deputy Minister of Justice.

On motion of the Honourable Senator Aseltine, it was resolved to report recommending that authority be granted for the printing of 800 copies in English and 200 copies in French of the proceedings on the said Bill.

At 4.00 P.M. the Committee adjourned to the call of the Chairman.

Attest.

Gerard Lemire,
Clerk of the Committee.

THE SENATE

STANDING COMMITTEE ON NATURAL RESOURCES

OTTAWA, Tuesday, June 23, 1959.

EVIDENCE

The Standing Committee on Natural Resources, which was instructed to study Bill C-49, to provide for the establishment of a National Energy Board, met this day at 2 p.m.

Senator Vaillancourt in the Chair.

The CHAIRMAN: Honourable Senators, can we agree to commence immediately without waiting for one more member to constitute a quorum, until that member arrives?

Agreed.

The CHAIRMAN: The first order of business is a motion that has been proposed that authority be granted for the printing of 800 copies in English and 200 copies in French of this committee's proceedings on the said bill.

Senator ASELTINE: I so move.

Senator PEARSON: I second the motion.

Motion agreed to.

The CHAIRMAN: The first witness who is to explain the bill is Mr. Fraser, Director of the Energy Studies Branch of the Department of Trade and Commerce, Ottawa.

Senator McDONALD: Mr. Chairman, I would like to say before Mr. Fraser explains the bill that this is a bill that took a lot of time in the House of Commons, and it is the type of bill that should have been introduced in this house. Had the bill been introduced in this house we could have saved the time of the House of Commons by probably a week, or approaching that time, and the bill would have received as good if not better attention here in committee. I realize that there were about, I think, 17 amendments made in the House of Commons. Perhaps Mr. Fraser when he is speaking will point those out as he reviews the bill. May I suggest that in the future if the Senate is to be given adequate responsibility, the Government should keep in mind the fact that we can, especially toward the latter part of the session when time means so much, introduce measures like this here and have them given really first-class study and so save a lot of time.

Senator ASELTINE: I might say, Senator McDonald, that we have had more legislation initiated in the Senate this year than ever before.

Senator McDONALD: Well, that is encouraging.

Senator ASELTINE: I have impressed your opinions on the Government from time to time, and I hope as time goes on we will get more legislation of this nature.

Senator McDONALD: We hope so.

Senator ASELTINE: We have had quite a number of bills already, eight or ten, introduced first in the Senate this year.

Mr. Chairman, what do you suggest that we do, have a general explanation first?

The CHAIRMAN: Yes.

Douglas M. Fraser, (Director, Energy Studies Branch, Department of Trade and Commerce):

Thank you, Mr. Chairman and gentlemen. This being my first appearance before the Senate committee I am not sure in what detail you would like me to proceed. As you know, this is a lengthy bill, having 101 sections, and each of them has some history behind it. We could spend a very long time indeed if I were to give you a full explanation at this stage. Perhaps it would be simpler if I gave you a quite brief explanation, and then you could ask whatever questions you may wish to put to me. If that is agreeable, gentlemen, I would refer you first to the explanatory note as it appeared in the bill on first reading, which stated:

The purpose of this bill is to establish a National Energy Board which shall, in order to assure to the people of Canada the best use of energy resources in this country, regulate in the public interest the construction and operation of oil and gas pipe lines subject to the jurisdiction of the Parliament of Canada, the tolls charged for transmission by such pipe lines, the export and import of gas, the export of electric power and the construction of those lines over which such power is exported. The Board shall also study and keep under review all matters relating to energy within the jurisdiction of the Parliament of Canada, and shall recommend to the Minister of Trade and Commerce such measures as it considers necessary or advisable in the public interest with regard to such matters. The Bill also authorizes the extension of the export and import provisions to oil.

Senator BRUNT: It is intended to include atomic energy as well?

Mr. FRASER: Only in as far as the advisory functions of the Board are concerned, senator. There are no regulatory powers in this bill respecting atomic energy, unless in the event that atomic power is used to produce electrical energy which is then to be exported.

Senator BRUNT: Then the power will be dealt with as electric power?

Mr. FRASER: That is right, sir. Now for a more detailed explanation, I can proceed if you wish to recapitulate the minister's statements in the house on the resolution stage and on second reading, or if you prefer to proceed immediately to questioning I should be very happy to be at your disposal.

Senator McDONALD: Mr. Chairman, were the amendments made in the House of Commons all incorporated in this bill?

Mr. FRASER: Yes sir; the version of the bill as passed in the House of Commons includes all the amendments.

Senator McDONALD: Could you point them out in your review? There are quite a number.

Mr. FRASER: I do not have a convenient list in just that form.

Senator McDONALD: I think those of us who have been following the bill through the House of Commons have them in mind pretty well, but I was just wondering if we could make sure that they were all in the bill.

Mr. FRASER: I can assure you, sir, they are all there.

Senator BRUNT: You know the sections that were amended, Mr. Fraser. Could you not pick them out as we go along?

Mr. FRASER: I think so, if it is agreeable.

Senator BURCHILL: I move that we proceed section by section.

Senator PEARSON: It will take some time.

Senator BRUNT: Well, I think that is what we should do. It is a very important bill, and we could take three or four days, if we want to. Let us do it right.

The CHAIRMAN: I have read the interpretation section, section No. 2. What is your pleasure?

Senator BURCHILL: I move that the interpretation section carry.

Carried.

The CHAIRMAN: Now we come to Part 1, on page 2. The title of this section is "National Energy Board" and sections 3 and 4 relate to the establishment of the board.

Senator HIGGINS: Mr. Chairman, I notice section 2, subsection 7 requires that each member shall reside within 25 miles of the city of Ottawa. Is that the usual rule? Are they civil servants or quasi-civil servants and supposed to live that close to Ottawa?

Mr. FRASER: In the preceding legislation the limit was five miles and it was thought in view of modern transportation methods and highways it would be appropriate to increase that distance to 25 miles.

Senator HIGGINS: Is it the rule that a civil servant shall live within five miles of the city of Ottawa?

Mr. FRASER: A board member is not a civil servant, but that applied to members of the Board of Railway Commissioners under the old Railway Act.

Senator HIGGINS: Why them more than anybody else?

Mr. FRASER: I think it was originally intended that they should be close to their place of business so that the business of the board could be carried on without any delays on that score.

Senator BRUNT: That means that a person residing in Montreal could not serve on this board?

Mr. FRASER: That is right.

Senator BRUNT: Even though he can come from Montreal in an hour or so, that in spite of that he would be barred from membership on the board? Suppose, for instance, that a man was to live at the hotel here in Ottawa would he be barred from membership on the Board?

Mr. FRASER: There we come into a nice legal point, whether or not he has established residence in Ottawa. There is nothing to prevent a member from owning two homes.

The CHAIRMAN: May I point out that there is a saving clause there which says that, "...or within such other distance thereof as the Governor in Council determines."

Senator BRUNT: I did not notice that saving clause. So an exception can be made?

Mr. FRASER: That is right. The real intent is to avoid the hypothetical case of a man living in Victoria being appointed to the board and rarely being present at its meetings.

Senator HIGGINS: So generally he must reside within 25 miles of the city of Ottawa but if he goes to the cabinet and explains that he lives in Montreal and could be here in a short time the cabinet might make an exception.

Mr. FRASER: That is right.

Senator BRUNT: Is this a full-time job for each member?

Mr. FRASER: Yes.

Senator BRUNT: Are there any restrictions as to investments on the part of anyone serving on this board?

Mr. FRASER: Yes.

Senator BRUNT: What are they?

Mr. FRASER: Subsection 8 provides that members shall devote the whole of their time to the performance of their duty under this act. Subsection 5 of section 2 also provides that a person is not eligible to be appointed or to continue as a member of the board if he is not a Canadian citizen or if as owner, shareholder, director, officer, partner or otherwise, he is engaged in the business of producing, selling, buying, transmitting, exporting, importing or otherwise dealing in hydrocarbons or power or if he holds any bond, debenture or other security of a company. I may say, Mr. Chairman, this is one of the amendments made in the house, the following words having been added, "If he holds any bond, debenture or other security of a company."

Senator BRUNT: So that in the House of Commons they enlarged it even to include bonds and debentures.

Mr. FRASER: That is right.

Senator BRUNT: So anyone serving on this board cannot have any investments of any kind in any power company.

Mr. FRASER: That is right. He must be like Caesar's wife.

Senator BRUNT: Suppose there was a provincial company operating entirely within a province—a provincial pipe line—this board would have no jurisdiction over it at all.

Mr. FRASER: That is right sir.

Senator BRUNT: Take the Saskatoon Pipe Line, which runs from Minden to Saskatoon—a short stub of a line—that is a provincial company, and this board would have nothing whatever to do with that line. Such a person could not serve on this board?

Mr. FRASER: That is correct.

Senator BURCHILL: I want to ask the lawyers on this committee, is the language satisfactory with respect to the holding of any bond, debenture or security of a company?

Senator BRUNT: Surely not of a company... You would never get anybody to serve on the board, if that were so.

Senator BURCHILL: That is as I read it.

Mr. FRASER: In the interpretation section company is defined as follows:

'Company' means a person having authority under a Special Act to construct or operate pipe lines.

Senator BRUNT: But even that does not allow a person who is connected with a purely provincial company to serve on the board, and the board would have no jurisdiction over that provincial company at all.

Mr. FRASER: That is right, sir.

Senator BRUNT: Was this question raised in the other place?

Mr. FRASER: I don't recall it being raised in the other place. If you look at section 14 of the Railway Act you will find a fairly close parallel. May I read that section?

14(1) No commissioner or officer of the Board shall directly or indirectly,

(a) hold, purchase, take or become interested in any stock, share, bond, debenture or other security, of any company subject to this Act, or

(b) have any interest in any device, appliance, machine, patented process or article, or any part thereof, that may be required or used as a part of the equipment of railways or of any rolling stock to be used thereon, or of any other work or undertaking subject to this Act.

(2) If any such stock, share, bond or other security, device, appliance, machine, patented process or article, or any part thereof or any interest therein, comes to or vests in any commissioner or officer of the Board by will or succession for his own benefit, he shall, within three months thereafter, absolutely sell and dispose of the same, or his interest therein.

The parallel I wanted to point out was that a company that manufactured tie-plates or break-shoe linings or any part of railway equipment, the shares or bonds of such a company could not be held by an officer or member of the Board of Transport Commissioners.

Senator BRUNT: Take the Ontario Northland Railway, does it come under the jurisdiction of the Board of Transport Commissioners?

Mr. FRASER: No sir.

Senator BRUNT: That is perhaps not a good example, because there is no stock out in that company. Let us take the Algoma Central and Hudson Bay Railway. Is that under the jurisdiction of the transport board?

Mr. FRASER: I don't know that railway, but I believe not. I believe it is a provincial incorporation.

Senator BRUNT: Then I could own stock in that company, and serve on the Transport Board, is that not correct?

Mr. FRASER: You could; but if you had stock in, say, McKinnon Industries Ltd. making something for the railway industry, you could not. The point I am trying to make is that the restrictive clause of this proposed bill is less restrictive than the comparable section in the Railway Act.

Senator BRUNT: In one part it is, and in the other part it is much broader, because this subsection says that if you are connected with any power company at all, whether under this act or not, you can't serve with the board.

Senator ASELTINE: Does it go that far?

Mr. FRASER: That is correct, sir.

Senator BRUNT: The gentleman behind me says that is not correct. Let us agree on this.

Mr. FRASER: Subsection 5 of section 3 reads:

A person is not eligible to be appointed or to continue as a member of the Board if he is not a Canadian citizen or if as owner, shareholder, director, officer, partner or otherwise, he is engaged in the business of producing, selling, buying, transmitting, exporting, importing or otherwise dealing in hydrocarbons or power or if he holds any bond, debenture or other security of a company.

That does not say that the company dealing in hydrocarbons or power has to be a federal incorporation.

Senator BRUNT: It does not have to be interprovincial, extraprovincial or international.

Mr. FRASER: That is right.

Senator BRUNT: It could be a provincial company.

Mr. ROBERT BURGESS: Mr. Chairman, I think there is a simple answer to the question that has been raised, in that the definition of "company" means a company incorporated by Special Act, which means legally and technically, a Special Act of the Parliament of Canada, and none of those provincial companies you speak of need be incorporated, or can be incorporated by a Special Act of the Parliament of Canada. Therefore with respect to subsection 5 of section 3, where it refers to "company", you must refer back to the interpretation section: a company that is incorporated by a Special Act of the Parliament of Canada, which immediately rules out all those provincial companies.

Senator BRUNT: Do you mean to say that you cannot incorporate by special act a company which wants to do business entirely within a province?

Mr. BURGESS: That is not within the jurisdiction of the Parliament of Canada.

The LAW CLERK: Yes, but that does not apply to the first part of the section; that only applies to bonds, debentures or other securities.

Mr. FRASER: This is where the confusion has arisen, I think.

Senator ASELTINE: The sub-clause was added in the House of Commons, was it not?

Senator BRUNT: What does the Railway Act say?

Mr. FRASER: Section 14?

Senator BRUNT: Yes; they have a similar clause in there.

Mr. FRASER: Section 14 of the Railway Act, subsection (1) (a), says that no commissioner or officer of the Board shall directly or indirectly, "hold, purchase, take or become interested in any stock, share, bond, debenture or other security, of any company subject to this act".

Senator BRUNT: "Subject to this act". Would you mind reading a definition of "company" out of that Railway Act?

Mr. FRASER: (Reading)

(4) "company" includes a person, and where not otherwise stated or implied means "railway company," unless immediately preceded by "any", "every" or "all", in which case it means every kind of company which the context will permit of; and "railway company" or "company" when it means or includes "railway company,"

(a) includes every such company and any person having authority to construct or operate a railway; and

(b) in the sections of this Act that require companies to furnish statistics and returns to the Board, or provide penalties for default in so doing, includes further any company constructing or operating a line of railway in Canada, even though such company is not otherwise within the legislative authority of the Parliament of Canada, and includes also any individual not incorporated who is the owner or lessee of a railway in Canada, or party to an agreement for the working of such a railway,"

Senator BRUNT: Does that finish it?

Mr. FRASER: That is it.

Senator BRUNT: Which is the broader definition, in your opinion?

Mr. FRASER: Sir, that is a legal matter.

Senator BRUNT: It is all inclusive, and yet with that definition they put in a proviso in section 14, do they not? When you read section 14 to us that this was copied from, did they not say a company "subject to this act"?

Mr. FRASER: Yes, sir, they do.

Senator BRUNT: Well, I am not proposing this as an amendment, but I would like this section to stand, that is, subsection (5). I am not proposing that it be amended, and I would not want to, unless the minister is entirely agreeable, but I think we should bring it to his attention. Would you mind submitting that to the minister, to see what his views are on it?

Mr. FRASER: I will be glad to do this senator. May I simply point out that the mood of the other place seemed to be to make the words more restrictive rather than less so.

Senator BRUNT: It may be that nobody thought of this. It might be interpreted as being restrictive.

Mr. FRASER: That is precisely the intent, I would gather.

Senator BRUNT: I think it should be brought to the attention of the minister to get his views on it.

Senator HIGGINS: What do you mean by special act, provincial act?

Senator BRUNT: No, a special act is the kind we put through.

Senator HIGGINS: Was it not a provincial act, though?

Senator BRUNT: No, as far as I know there are no companies incorporated by provincial act; they are all done by letterspatent.

The CHAIRMAN: Do you think it will be better to proceed paragraph by paragraph?

Senator ASELTINE: We are only postponing the consideration of subsection (5) of section 3. Could we not pass the other subsections of section 3 now?

Agreed.

The CHAIRMAN: Section 6 relates to the head office of the Board, and meetings.

Section agreed to.

The CHAIRMAN: Section 7 deals with the Board making rules.

Section agreed to.

The CHAIRMAN: Section 8. Staff.

Senator BRUNT: How do you remove the secretary?

Mr. FRASER: In the same manner, sir—the Governor in Council.

Senator BRUNT: That must be under the Civil Service Act?

The LAW CLERK: No, during pleasure.

The CHAIRMAN: Section 8(2) says:

The secretary shall be paid such salary as the Governor in Council may fix, and he shall reside in the city of Ottawa or within twenty-five miles thereof or within such other distance thereof as the Governor in Council determines.

Senator BRUNT: That is dealing with the secretary's salary.

Senator McDONALD: How does that compare with the right section under the Railway Act, regarding the distance?

Mr. FRASER: In the same case it was five miles previously.

The CHAIRMAN: Section 8(3) says:

For the purposes of the Public Service Superannuation Act, the members and secretary of the Board and the officers and employees appointed as provided in subsection (1) shall be deemed to be persons employed in the public service.

Section 8 agreed to.

The CHAIRMAN: Section 9 says:

The Governor in Council may appoint and fix the remuneration of experts or persons having technical or special knowledge to assist the Board in any matter in an advisory capacity.

Section agreed to.

The CHAIRMAN: Section 10 says:

(1) The Board is a court of record.

(2) The Board shall have an official seal, which shall be judicially noticed.

(3) The Board has, as regards the attendance, swearing and examination of witnesses, the production and inspection of documents, the enforcement of its orders, the entry upon and inspection of property and other matters necessary or proper for the due exercise of its jurisdiction, all such powers, rights and privileges as are vested in a superior court of record.

Senator McDONALD: Where are these taken from; is there any other source?

Mr. FRASER: Yes. Subsection (10) (1) and (2) of the bill are modelled on section 9(2) of the Railway Act; and section 10(3) is identical with section 33(3) of the Railway Act.

Senator BRUNT: I suppose "superior" is meant to be an adjective there. There is no Superior Court in Ontario, and in Saskatchewan it is the Court of King's Bench. Does this refer to the high court in each province?

Mr. FRASER: I believe that is the intent.

The CHAIRMAN: Shall clause 10 carry?

Carried.

Clause 11, on the question of jurisdiction.

Mr. FRASER: This section is substantially identical with section 33(1) of the Railway Act but there is one difference, in that while the Railway Act bases action by the Board of Transport Commissioners on receipt of a complaint or request from an interested party, this Bill leaves such action to the discretion of the energy board.

The CHAIRMAN: Shall section 11 carry?

Carried.

Clause 12, mandatory orders.

Mr. FRASER: This section is identical with 33(2) of the Railway Act.

Senator BURCHILL: Is there an appeal from this to the Supreme Court or to the Governor in Council?

Mr. FRASER: Yes, as you will see later on, there is provision for appeal on matters of law or jurisdiction to the Supreme Court. The board's findings as to fact, however, are final.

The CHAIRMAN: Shall section 12 carry?

Carried.

Section 13. This has to do with delegation of powers.

Senator BRUNT: How can you differentiate between the powers?

Mr. FRASER: It is a matter of judgment which has been exercised by the ministers and through them, acting on their instructions, the legal officers.

Senator BRUNT: They will determine what is a minor matter?

Mr. FRASER: This distinction is made in the terms of what are listed in section 13 as the sections in respect of which the board may not delegate its functions. These are deemed to be the important functions which the board itself must not delegate.

Senator McDONALD (Kings): Was there any change made in this section by way of an amendment in the House of Commons?

Mr. FRASER: Yes. In the list of exceptions one clause was struck out, having been left there by mechanical error. I think I am right in saying that this is the only change in that section.

The CHAIRMAN: Shall the section carry?

Carried.

Section 14. This has to do with the powers of a single member.

Mr. FRASER: Section 14, subsection 1 is identical with section 12(1) (d) of the Railway Act.

Section 14, subsection 2 is modelled on section 36 of the Railway Act. In the latter this section was designed to complement section 33(1) in which the Board of Transport Commissioners was given authority to act in certain matters on the complaint or request of any interested party. The present bill's section 11 no longer requires a complaint or a request before the board will act. Sections 11 and 14(2) do not duplicate each other, entirely, however.

Shall the section carry?

Carried.

Section 15, enforcement of board orders.

Mr. FRASER: These provisions are identical with those in section 50(1) and 50(2) of the Railway Act.

Senator HIGGINS: Once an order has been filed with the Exchequer Court, does it become a matter for the jurisdiction of the Exchequer Court or is it still under the jurisdiction of the board? The reason I am asking you this question is that in section 17 it says the board may review, rescind, change, alter or vary any order or decision made by it. If it is an order of the Exchequer Court how can the board deal with it? If it is under the jurisdiction of the Exchequer Court how can the board rescind it?

Senator PEARSON: I thought we were on clause 15.

Mr. FRASER: There is a link-up between clause 15 and 17.

Senator BRUNT: Is this not where the board applies to the Exchequer Court for an order to enforce its order, that is, they are enforcing the board's order with a court order.

Senator HIGGINS: I am reading sections 15 and 17 together. Perhaps that is the ordinary procedure but I cannot understand it.

Mr. FRASER: Here I am afraid we are in the realm of legal procedure and far be it from me to attempt to define law in the presence of so many learned senators.

Senator McDONALD (*Kings*): Is there anyone from the Justice Department here?

Mr. FRASER: Not today.

Senator BRUNT: Suppose then that we stand section 15 and 17 until we get somebody here from that department.

The CHAIRMAN: Sections 15 and 17 stand.

Senator McDONALD (*Kings*): Should section 16 stand too?

Senator BRUNT: We might as well stand the three sections and we will clean them all up at one time.

The CHAIRMAN: Sections 15, 16 and 17 stand.

The CHAIRMAN: Section 18, appeals to Supreme Court.

Mr. FRASER: The provisions of section 18 (1) and (2) are identical with sections 53 (2) and (3) of the Railway Act.

Mr. Chairman, I have not previously referred to the Borden Report—the first report of the Royal Commission on Energy. Honourable senators may wish from time to time to inquire as to the relationship between the provisions of this bill and the proposals of that report. There will be occasions when in making these explanatory notes which had been prepared during the course of the preparation of the bill, I shall refer to the Borden Report.

In this case we would like to point out that no reference is made in the Borden Report to the subject of appeals, but Mr. Borden later wrote to suggest that the right of appeal should be provided for to the Exchequer Court or the

Supreme Court of Canada from any regulatory decision of the board, and that it would be a great mistake to apply section 53 (1) of the Railway Act, and to allow such appeals to go to cabinet.

Findings of fact by the Energy Board, in the view of the Government, should not be subject to appeals to the courts any more than to cabinet. The board should be established as the authority to determine matters of fact in this complicated and highly technical area, and its findings should be conclusive. Appropriate provision should be made for reconciliation or co-ordination of the board's views and those of the Government as to proper public policy, through the requirement of approval by the Governor in Council in certification and licensing cases. Finally, the protection of the Supreme Court should be available to any interested party who may feel that a decision or act of the board, even though it may have been approved by the Governor in Council, is in error as to law or jurisdiction. This last is particularly important to protect the interests of the provinces, some of which apparently feel that the Borden Commission has suggested courses of action which might come close to infringing upon provincial jurisdiction, in an area in which respective jurisdictions have not been too clearly defined.

Senator BURCHILL: Then I take it there is no appeal to the Governor in Council; they have no power to stay an order of the board?

Mr. FRASER: That is right. I should qualify that, if I may. The approval of the Governor in Council is required for recommendations of the board for certification for public convenience and necessity in respect of construction of pipe lines or international power lines, or the issuance of export licences; for actions that require special licences, there shall be review by the Governor in Council. This in effect means that the Governor in Council does receive an appeal in respect of an order, but must first approve of the decision of the board, or disapprove, as the case may be.

Senator BRUNT: And that will be done before an appeal is taken to the Supreme Court of Canada? What I am wondering about is what is your first move?

Mr. FRASER: Well, sir, in the case of an application, shall we say for certification of public convenience and necessity—

Senator BRUNT: Let us take an application for the export of 300 million feet of gas a day, and the applicant is dissatisfied.

Mr. FRASER: He will not know of the outcome of his application until the Governor in Council has approved or disapproved of the recommendation of the board.

Senator BRUNT: It is not made public.

Mr. FRASER: Well, this is not established in the act. There is a public hearing; the board then makes its recommendation . . .

Senator BRUNT: The applicant knows of the recommendation.

Mr. FRASER: He presumably would.

Senator BRUNT: Let us say he has made application for export of 500 million feet, and the board grants him 300 million feet. Now what does he do? Does he sit by and wait for the Governor in Council to approve or disapprove of the board's recommendation and then launch his appeal, or does he launch his appeal as soon as he knows of the order of the board?

Mr. FRASER: Well, senator, I suppose there are two courses he can follow. If he is an active sort of fellow he will talk to his cabinet minister.

Senator BRUNT: That is a practical approach.

Mr. FRASER: Yes. What the legal procedure will be as to when he will file his appeal, if he is appealing as to law or jurisdiction I presume as soon as the order of the board is issued he would have a right to launch an appeal.

Senator BRUNT: Has the Governor in Council the right to review an order made by the board, or does it just have the right to approve or reject?

Mr. FRASER: To approve or reject.

Senator BRUNT: It can't vary an order in any way?

Mr. FRASER: That is the intent—to approve, reject, or refer back for reconsideration.

Senator BRUNT: Can the Supreme Court of Canada increase it?

Mr. FRASER: They would have to base this on a question of law or jurisdiction. I find it hard to understand how they would vary it.

Senator BRUNT: Then what is the purpose of an appeal to the Supreme Court of Canada, if an applicant got an order for 300 million feet a day?

Mr. FRASER: I am not quite sure how to answer that, senator. It seems to me that there are two separate categories of problem here: one is with respect to quantity, an arithmetical question, and the other is a question of law, whether the subject has received due consideration under the law, and has been lawfully treated by a board having some judicial attributes. An appeal to the Supreme Court is contemplated as a guarantee of the right of the subject in that latter case, in the event that he has been wrongfully treated, either as to law or jurisdiction, as to the facts, it was the view of the Government, as we understand it, that it is only reasonable if you are going to establish a board of experts to assess the facts, to take the findings of the board to be final.

Senator BRUNT: Would you give me an example of circumstances under which you would take an appeal to the Supreme Court of Canada? May I ask you, was this point raised at all in the other place?

Mr. FRASER: Not in this context, no.

Senator ASELTINE: An appeal is only taken on the question of law or jurisdiction.

Mr. FRASER: Yes.

Senator BRUNT: The jurisdiction of this board under section 11 is almost all-inclusive.

Mr. FRASER: Well, sir, I recall some analogies in the railway jurisprudence. There may possibly be analogies here: I am thinking of the coal mining case, where the question arose as to whether a railway incorporated within a province, being connected with an interprovincial railway, was subject to the jurisdiction of the Board of Transport Commissioners.

Now, there could be an analogy here. In fact, there has been a somewhat similar case in some respects before the Board of Transport Commissioners in respect of the Westspur Pipe Line. This is a question of jurisdiction of the board, to decide what should be done with respect to the disposition of a work located in a province being part of an interprovincial work or undertaking.

Senator BRUNT: You would have no objection if we let this particular section stand?

The CHAIRMAN: Section 18 stands.

Mr. FRASER: Have you a question you wish me to put forward on this section?

Senator BRUNT: No. The Department of Justice will be able to send somebody up and provide us with the necessary answers.

The CHAIRMAN: Section 19. Orders and decisions final.

Mr. FRASER: If you wish section 18 to stand, I expect you will want section 19 to stand also.

Senator BRUNT: Yes, until somebody comes up.

The CHAIRMAN: Section 20. Public Hearings.

Mr. FRASER: Section 20 is modelled substantially on section 19(2) of the Railway Act. The latter provided that public hearings would be left to the discretion of the Board, but that any complaint made to it should, on the application of any party to the complaint, be heard and determined in open court. Recommendation 25 of the Borden Report suggested that all hearings be public. It is clearly desirable that the facts in relation to important proceedings before the Energy Board be established in public hearing, with full opportunity for examination by the Board and by interested parties. There may be occasions, however, when no public interest is affected and speed of treatment is important. This bill consequently requires that hearings shall be public in cases of major importance, i.e. those dealing with the issue, cancellation or suspension of certificates or licences, but leaves to the Board itself discretion to decide whether a public hearing is advisable in other cases.

Section agreed to.

Mr. FRASER: Section 21 is identical with section 69 of the Railway Act.

The CHAIRMAN: Part II. Section 22.

Mr. FRASER: Subsection 22(1) has no counterpart in existing energy legislation, but is based almost entirely on the following recommendations of the Borden Report:

20. That the National Energy Board shall have authority:

- (a) To study, review and from time to time recommend to the Minister of Trade and Commerce such policies and measures as it considers necessary or advisable in the public interest for the control, supervision, conservation, use and development of energy and sources of energy and for the production, recovery, manufacture, processing, distribution, transmission, sale, purchase, exchange, disposal, import or export of energy and sources of energy within, to or from Canada....
- (c) To compile, study and review the statistics and estimates of the quantity, quality, location and availability of the various forms of energy and sources of energy in Canada so that the Board may maintain an up-to-date inventory of Canada's energy resources....
- (e) To make a continuing study and appraisal of all matters relating to the exploration for, production, processing, transportation and marketing of natural gas and oil and by-products thereof in Canada and elsewhere.

Senator HIGGINS: What are you reading from now?

Mr. FRASER: These are excerpts from recommendation number 20 of the Borden Report.

Senator TAYLOR (*Westmorland*): Is there any provision when a company wants to explore for gas or oil or the production of electricity that authority must come from this Board?

Mr. FRASER: No, sir, by no means. All that is meant by section 22 is that the Board shall study, keep informed, on what is going on in respect to energy. This is wholly an advisory section, and there is nothing regulatory in it. Almost the first words in the second line say, "matters over which the Parliament of Canada has jurisdiction", which have been carefully inserted to avoid any impression or any danger that the jurisdiction of the provinces in these matters might be interfered with in any way.

Section agreed to.

The CHAIRMAN: Section 23. Publication of Studies and Reports.

Senator McDONALD: Why is the word "may" put in that section, rather than the word "shall"? I suppose it is anticipated that there may be some voluminous reports that might not be necessary to publish?

Mr. FRASER: That is right, sir. Many of the studies done by boards, agencies, branches of departments, while they may be helpful for some special purpose or may shed some light on an area of interest, may not be worth the money involved in publishing and may not have enough public interest to warrant publishing.

Section agreed to.

The CHAIRMAN: Section 24. Powers of Board.

Section agreed to.

The CHAIRMAN: Part III. Section 25—Who may construct or operate pipe lines.

Mr. FRASER: Subsection 25(1) is modelled on the first part of Section 10A of the Pipe Lines Act as amended. "Company" in this context is defined in the Bill as "a person having authority under a Special Act to construct or operate pipe lines". Such a Special Act is an Act of the Parliament of Canada that (1) authorizes a person named in the Act to construct or operate a pipe line, or (2) is enacted with special reference to a pipe line that a person is by such an Act authorized to construct or operate.

The LAW CLERK: And "pipe line" is also defined.

Mr. FRASER: Thank you, yes. Honourable senators might be interested to know one matter of background explanation. There have been suggestions in the past that there is a substantial case for allowing any company incorporated under the laws of Canada (not only by Special Act but under the Companies Act) for purposes which included the construction, ownership and operation of pipe lines, to apply to the Board of Transport Commissioners for leave so to construct, own or operate. This suggestion was turned down during the drafting of the Pipe Lines Act on the ground that the right to expropriate land should be conferred only by Parliament.

It has since been suggested in connection with this Bill that the public interest might be better served by having the right of expropriation dependent on a certificate of public convenience and necessity, rather than on a Special Act. While a Special Act is in some cases merely hunting licence, from which an actual pipe line project may or may not result, the Energy Board procedure would be particularly appropriate to ensure that only practical and immediate projects, which in the view of the Board and the Governor in Council merit a certificate, are granted the right of expropriation. It has been decided, however, that the control of Parliament over such grants of the right of expropriation should be retained, and this Section has consequently been drafted as in the Pipe Lines Act.

Subsection 25(2) is modelled on the latter part of Section 10A of the Pipe Lines Act as amended. In 1949 Parliament asserted its jurisdiction over inter-provincial and international pipe lines by enacting the Pipe Lines Act as a piece of general legislation, which could apply to companies having authority under a Special Act of Parliament to construct or operate oil or gas pipe lines. The 1949 Act gave general powers to pipe line companies, including that of expropriation, which would supplement those already granted by the Special Act. It was envisaged that, in order to gain the power of expropriating and holding land conferred by the Pipe Lines Act, companies intending to construct pipe lines beyond provincial or international boundaries would seek incorporation by a Special Act of Parliament, and thus come under the control of the Board of Transport Commissioners. In short, the Pipe Lines Act was intended as enabling legislation which, read together with the Special Act, would give the company concerned the power to construct its line. Consequently, Parliament did not

specifically provide in the Act that pipe line companies under federal jurisdiction were required to apply to the Board of Transport Commissioners for leave to construct.

It subsequently appeared that a company might lay a pipe line across a provincial or international boundary without obtaining either a Special Act of Parliament, or leave from the Board of Transport Commissioners, so long as it was able to get along without expropriation powers by obtaining the necessary rights from private land owners, and so long as it was able, in the case of navigable water crossings, to obtain approval under the Navigable Waters Protection Act. Consequently, in 1953 the Pipe Lines Act was amended to close this gap by including, within the definition of Special Act companies, all persons operating extra-provincial pipe lines and by providing that only Special Act companies should be able to construct or operate such lines.

This provision was not to be retroactive, however, and any person could continue to operate or improve such a line which was fully completed at the date of the amendment to the act. This included the important Montreal to Portland pipe line which carries crude oil to Montreal from Portland and whose construction ante-dated even the Pipe Lines Act.

The present section 25(2) and 25(2)(c) has carried this amendment into the bill. It carries the additional provision, however, that all previously existing pipe lines must be operated in accordance with the provisions of the Energy Board Act in the same way as a line operated by a Special Act company. Improvements in such lines may still be carried out without having to apply to the energy board for a certificate of convenience and necessity, such improvements, according to the December 4, 1953 debate on the Pipe Lines Act amendment, to include even a complete looping of the line concerned.

The first two parts of section 25(3) are identical with section 2(4) of the Pipe Lines Act as amended June 26, 1954 and are designed to ensure that those who are entitled to operate a company are entitled to operate the line although they may not be the persons incorporated under the Special Act.

The CHAIRMAN: Shall section 24 carry?

Carried.

Section 25. This deals with the question of who may construct or operate pipe lines.

Senator ASELTINE: Was this section copied from the Pipe Lines Act?

Mr. FRASER: No, but it complements section 25(1).

Senator BRUNT: This is a new section?

Mr. FRASER: That is right.

The CHAIRMAN: Shall the section carry?

Carried.

Shall section 26 carry?

Carried.

Section 27. This has to do with the approval of the board for the location of pipe lines.

Mr. FRASER: This is identical with section 11 of the Pipe Lines Act.

The CHAIRMAN: Shall the section carry?

Carried.

Section 28: application for certificate; material to be filed.

Mr. FRASER: Sections 28(1) and 28(2) are identical with sections 12(1) and 12(2) of the Pipe Lines Act.

The CHAIRMAN: Shall the section carry?

Carried.

Section 29 provides for plan, profile, book of reference and so forth.

Mr. FRASER: Mr. Chairman, if I may, sections 29 through 35 are all identical respectively with sections 13 to 19 inclusive of the Pipe Lines Act.

Senator BRUNT: Were any changes made in the House of Commons with respect to these sections?

Mr. FRASER: I do not believe so.

The CHAIRMAN: Shall sections 29 to 35 carry?

Carried.

Section 36, approval of deviations.

Mr. FRASER: Subsections 1 and 2 are the same as sections 20(1) and 20(2) of the Pipe Lines Act. Subsection 3 differs from section 20(3) of the Pipe Lines Act in that the extent to which a pipe line may deviate from its plotted course and still be exempted from the provisions of this section is now discretionary with the board rather than having a fixed figure of 300 yards. Such definite limitations in the past have proved embarrassing when a pipe line would have to be laid to skirt some obstacle and the deviation would amount to something like 301 yards, and it was felt burdensome to require a company to make application for such deviation. It was thought that everything possible should be done to avoid unnecessary procedural delays in the construction of pipe lines in view of the short construction season in Canada.

Senator BRUNT: Is there any limit here at all?

Mr. FRASER: No, sir. The board is expected to exercise its discretion.

The CHAIRMAN: Shall section 36 carry?

Carried.

Section 37, board may order deviations.

Mr. FRASER: Section 37 is identical with 33 of the Pipe Lines Act.

Shall the section carry?

Carried.

Section 38, leave to open line.

Mr. FRASER: Section 38, subsection 1 is identical with section 34 of the Pipe Lines Act. Subsection 38(2), which has no counterpart in the Pipe Lines Act, merely gives authority to the board to grant leave to operate. This section is designed to ensure that all lines are inspected in regard to public safety before they are opened.

It is contemplated that for purposes of satisfying the board that section of pipe line may safely be opened for transmission, inspection may be carried out by the board's own personnel or by private engineers who may submit affidavits of inspection to the board, or the board may accept evidence from the company itself, that satisfactory tests and inspections have been made; this, however, will be left to the board to decide.

Senator BRUNT: This does not restrict in any way the right of a company to test this line.

Mr. FRASER: No sir.

Senator BRUNT: If it did, it would not be a very workable section.

Mr. FRASER: Absolutely not.

Senator BRUNT: Once the board is convinced that the line is in a safe condition, then they are allowed to transport gas.

Mr. FRASER: That is correct. Whether the board takes the company's affidavits as to insurance underwriters' inspections or as to the company's own inspections, or whether the board sends its own engineers out to watch the actual tests being made, is up to the board.

The CHAIRMAN: Section 39—public safety.

Senator ASELTINE: Is that section taken from the Pipe Lines Act?

Mr. FRASER: Yes, subsections 1 and 2 are identical to section 35 of the Pipe Lines Act, except that the regulations referred to must now be approved by the Governor in Council.

Section 39 has no counterpart in the Pipe Lines Act. It merely provides penalties for violations of such regulations.

Senator BRUNT: The penalties are set out in the Criminal Code.

Mr. FRASER: That is right.

The CHAIRMAN: Section 39, carried.

Section 40.

Senator BRUNT: I think section 40 should stand, because Senator Bouffard raised a point about it in the Senate. We will be having further meetings of this committee, and I think we should let it stand until Senator Bouffard is here.

Mr. FRASER: I may say that some information has already been placed in Senator Bouffard's hands.

Senator BRUNT: Is he satisfied?

Mr. FRASER: That I don't know.

Senator BRUNT: If it is agreeable, I think the section should stand.

Senator TAYLOR (Westmorland): The board's order applies as well to provincial power commissions?

Mr. FRASER: In so far as international connections are concerned, yes.

Senator BRUNT: But not interprovincial in any way?

Mr. FRASER: No.

The CHAIRMAN: Section 40 stands.

Section 41.

Senator BRUNT: Did Senator Bouffard raise a question with respect to section 41 too?

Senator BURCHILL: Just with respect to 40.

Mr. FRASER: The question he raised as to section 40 would, I should think, also relate to section 41.

The CHAIRMAN: Section 41 stands.

Section 42. May we hear from Mr. Fraser on that?

Mr. FRASER: This provision, which has no counterpart in existing energy legislation, continues the parallel begun in section 40. The corresponding provisions regarding pipe lines are sections 32 to 37. This section allows the board to make regulations concerning the above matters, subject to the approval of the Governor in Council.

What we have done here, honourable senators, is to put in broad terms in one section what was intended to be parallel of several sections which are set forth more precisely in respect of pipe lines.

Senator BRUNT: Is it related in any way to section 40 and 41?

Mr. FRASER: Yes, I think in a sense it is.

Senator BRUNT: Could we allow that to wait until Senator Bouffard comes back?

Mr. FRASER: We have no objection.

The CHAIRMAN: Sections 40, 41, 42 and 43 stand.

Senator BRUNT: There is no principle involved in section 43. If there is no objection, perhaps it should stand.

The CHAIRMAN: Section 43 stands. Section 44.

Mr. FRASER: This provision, which has no counterpart in existing energy legislation, gives the board the power to grant certificates for pipe lines and power line projects, subject to the approval of the Governor in Council. It also requires that the board must be satisfied that any such line is and will be required by the present and future public convenience and necessity.

The factors which are to be taken into account in such applications come from various sources: section 12(3) of the Pipe Lines Act and Recommendation 21 of the Borden Report, and a memorandum drawn up by the Board of Transport Commissioners for their own guidance and for the guidance of applicants appearing before it. If the senators wish, I will be glad to read those texts to which I have referred.

Senator BRUNT: Yes.

Mr. FRASER: Section 12(3) of the Pipe Lines Act reads:

Upon the application, the board shall have regard to all considerations that appear to it to be relevant and in particular to the objection of any party interested, to a public interest that in the board's opinion may be affected by the granting or the refusing of the application, and to the financial responsibility of the applicant.

Recommendation 21 of the Borden Report reads:

That in exercising its responsibility with respect to the issuance of . . . certificates of public convenience, the board shall take into account all matters which in its opinion are required to be considered by it in the public interest and in particular the following matters: (i) the economic feasibility of the pipe line project and whether or not such project is in the national interest; (ii) the financial structure, ownership, financing, engineering and construction plans of any applicant and the opportunity for the people of Canada to participate in the financing, engineering and construction of the project.

The Board of Transport Commissioners had previously drawn up for its own guidance a set of rules showing the following factors to be taken into consideration in any application for leave to construct:

1. Proof that the directions of the order fixing the date for hearing, etc., have been complied with.
2. Financial responsibility of the applicant—method of financing construction—financial ability to construct and operate the line.
3. Route map.
4. Availability of gas or oil—evidence by competent experts as to reserves and availability of the gas or oil to the pipe line.
5. Purchase contracts between the gas pipe line company and suppliers of the gas.
6. Market data—where and what is the market—data re market for initial years and later years.
7. Evidence to show a throughput sufficient to establish economic feasibility of the line.
8. Gas sales contracts between the pipe line company and distributing companies or consumers—oil sales contracts.
9. Information as to gathering lines where they are necessary to bring the gas or oil to the pipe line—are they to be constructed by the applicant or by other companies.
10. If the line is international, what arrangements have been made and what authorization and permits have been obtained for the construction of the facilities in the United States and for importation of gas or oil into the U.S.—(or for import into Canada, if that is the case).

11. Provincial licence or permit for export of the gas or oil from the province, where required by provincial law.

12. Licence under the Exportation of Power and Fluids and Importation of Gas Act, in respect of international pipe lines.

13. Particulars of the pipe line and its facilities, size, capacity, route, engineering features of the system and route, etc.

14. Estimates of cost of construction.

15. Estimates of cost of operation.

16. Refineries and storage facilities.

17. Statements of estimated revenues and expenses for initial and subsequent years during life of the pipe line.

18. Price of the gas to be paid by the company to the suppliers, and selling price the company will receive from purchasers (this may be included in purchase contracts and sales contracts referred to above) with a view to showing the cost to consumers and economic feasibility of the line.

19. Does the project conform with national policy in so far as declared by the Federal Government or Parliament.

20. Dates when construction will commence and be completed.

21. Availability of pipe, machinery, equipment, etc.

22. Public interest—what public interest will be served by the pipe line.

23. Competition, if any, between proposed pipe line and existing pipe lines—will the competition be in the public interest—what effect will it have on existing lines.

24. Generally, proof that oil or gas is available to the pipe line, that there is an adequate market for it at the other end, that the project is economically feasible over the life of the line, and financially sound, and that the applicant is financially able to construct and operate the line.

That is the end of my quotation.

Senator HIGGINS: You use the word "person" sometimes. How do you define a person?

Mr. FRASER: It can be an individual or corporate person, sir, either one.

Senator HIGGINS: You have no interpretation of "person", but you have of "company". In other words, either an ordinary person or a company can apply for a certificate provided that the company must be incorporated under a special act; is that right?

Mr. FRASER: Yes, sir.

The specific criteria listed in this Section are to all intents and purposes a summary of these rules I have quoted. Some overlapping of these with the Pipe Lines Act and the Borden Report was, of course, inevitable. The requirement that the line is and will be required by the present and future public convenience and necessity is modelled on Section 15 (3) of the Aeronautics Act, which states the criteria regarding commercial air service licence applications to the Air Transport Board.

It has been suggested that a detailed list of criteria brings up the danger of restrictive interpretation by the Courts on the power of the Board to apply criteria other than those specified. On the other hand, a too general description might afford insufficient guidance to the Board. In its present form, this Section leaves the Board free to consider all such matters as appear to it to be relevant.

Now, honourable senators, and Mr. Chairman, I note that Mr. Driedger, of the Department of Justice, has come in. I am delighted to see him here,

and I hope that any questions involving legal matters you will take up with him. Perhaps until he gets the feel of the meeting we can carry on section by section, and he can catch up with those sections that we have stood over.

Senator BRUNT: I do not think we shall get through with the bill today.

Mr. FRASER: I did not suggest we would, senator.

Senator BRUNT: I wonder if he would define "public interest"?

Mr. DRIEDGER: Perhaps that is a matter that should be left to the politicians rather than to the Department of Justice.

Senator BRUNT: Somebody from the other place, because there are no politicians here.

The CHAIRMAN: Do you prefer to come back to Mr. Driedger and continue with the sections?

Senator BRUNT: I thought we should hear him on some of these sections that we have stood, while he is here.

Senator ASELTINE: Have we carried section 44?

Section agreed to.

Senator ASELTINE: Let us take sections 45 and 46.

Mr. FRASER: Section 45 is modelled on sections 12(3) and 12(4) of the Pipe Lines Act.

Section 46 is modelled on sections 12(5) of the Pipe Lines Act. Among such terms and conditions should be definite limits to the extension or addition of facilities which may be carried out under the authority of a single certificate. The Board of Transport Commissioners Customarily has had no objection to an entire line being looped on the basis of its original "leave to construct" order, so long as the same right of way is used. Since the Board does not carry out any regulation of rates, its main concern has been the further expropriation of land. Similarly, the Borden Commission did not recommend that a further certificate should be required for extension, looping, or addition to compression or pumping capacity of pipe lines. Presumably the Commission felt that its proposal to require existing pipe lines to obtain a licence from the National Energy Board, and to seek a further licence in the event of a change in the direction of flow or a major change in capacity, would achieve the same purpose. As explained earlier, this Bill does not provide for such licences.

On the one hand it is not desirable to burden the National Energy Board with the necessity of holding a hearing and issuing a certificate of convenience for every addition to equipment, to burden the Government with approving such certifications, or to burden industry with formal applications in respect of every little capital addition. On the other hand, if the Board is to set rates for pipe lines, it must first have some control of investment in them, or else it will be faced with completed investments, perhaps of a very substantial nature, on which the pipe line company desires to be allowed a fair rate of return, regardless of how the National Energy Board might view the "public convenience" of the investment.

The distinction between a "major" investment which will affect the rate base, and one which will not, may be a difficult one. However, extensions or additions to pipe lines or power lines themselves may be taken care of by Section 49 of this Bill, which gives the Board authority to exempt lines or parts of lines from the certificate provisions. Procedure for approval of additions in the form of compressor stations or other facilities will presumably be provided for by the regulations, if not by the terms and conditions of the certificate.

Senator BRUNT: Are there any rates set now?

Mr. FRASER: There is no federal supervision over rates, tolls and tariffs of pipe lines, sir. There is provision in the Pipe Lines Act for such control in respect of oil pipe lines under the jurisdiction of Parliament, provided that such pipe lines have been declared to be common carriers, have been so declared by the Board. The major oil pipe line companies have in fact conducted themselves as if they were common carriers, but the Board has never declared them to be common carriers. Therefore, that power to exercise jurisdiction over the rates, tolls and tariffs of oil pipe line companies has not been exercised.

Senator BRUNT: In other words, there has been no abuse up to the present time?

Mr. FRASER: That is right.

Senator BRUNT: Does the same apply to the gas lines?

Mr. FRASER: There has been no provision for control of rates for gas and pipe line transmission companies.

Senator BRUNT: So there has been no abuse there or there would have been some interference.

Mr. FRASER: There has been a suggestion that this is one reason for bringing this legislation along but I would not know about that.

Mr. McDONALD (*Kings*): Perhaps now, Mr. Chairman, we could go back to the sections that were stood over.

The CHAIRMAN: Shall sections 45 and 46 carry?

Carried.

The CHAIRMAN: We will now revert to section 3 of the bill, relating to the establishment of the board.

Senator BRUNT: The point that we raised is that I thought that we should add the same words that are in the act setting up the Board of Transport Commissioners. In other words, in clause 3 of the bill, subclause 5, after the words "... of a company" add these words, "... subject to this act."

The CHAIRMAN: Mr. Driedger, would you be prepared to answer that question put by Senator Brunt?

Mr. E. A. Driedger, Assistant Deputy Minister, Department of Justice:

Mr. DRIEDGER: Yes, Mr. Chairman, I will endeavour to.

I really do not think it would be necessary to say so because the word "company" as used throughout the whole bill always means the same thing.

Senator BRUNT: Would it not help to clarify the meaning?

Mr. DRIEDGER: Possibly, but at the same time there are always pros and cons, and it might then raise the question elsewhere that where it did not say that you did not mean a company as defined in the bill. I think frankly it would be better if it were left as it is in the bill because if we deviate from that in any way the question might be raised that some other section might be affected.

Senator BRUNT: Well, would this apply to a completely provincial pipe line, like the Saskatoon pipe line, for instance. Could anyone connected with that company serve with this board?

Mr. DRIEDGER: If he holds any bond or debenture of a company ... not necessarily, because it also says if he is engaged in the business of producing, selling, buying, transmitting and so forth, so he would be caught there.

The CHAIRMAN: Shall section 3 carry?

Carried.

Now, we will take up sections 15, 16 and 17, which were stood.

Are there any questions on these sections?

Senator BRUNT: It is just a question on how these sections operate. I gave as an example, an application is made for the export of gas and the board makes an order allowing the applicant to export 300 million feet a day. The applicant is dissatisfied and wants to export 500 million feet a day. What remedy, under this section, has he, if any?

Mr. DRIEDGER: Perhaps I could explain the sections from our point of view and the way they hang together. I do not know just what the answer to your question would be but it may turn up. I may say first of all that sections 15, 16 and 17 are not really new. In the present Pipe Lines Act the jurisdiction is exercised by the Board of Transport Commissioners and that board in relation to the Pipe Lines Act is given all of the powers and functions and so on that it has under the Railway Act, and in the Railway Act you find sections comparable to 15, 16 and 17. I want to say something about sections 18 and 19 especially.

Section 15 provides in effect that the board can file its order in a court and it then becomes an order of the court. Now, my information is that a provision of that kind is rarely if ever used. You find it in the Railway Act and it also is in the Aeronautics Act and it is in the Pipe Lines Act. I do not know whether it is used to any extent but the effect of its being there, I think, is enough to ensure enforcement of its orders. If somebody did violate an order of the board the board itself has no enforcement machinery, it has no sheriff, if cannot commit people for contempt and so on, and if you want to enforce the order you file it with the court and then you have remedies that are inherent in a superior court of record.

Senator BRUNT: In other words, the filing of it makes it an order of the superior Court?

Mr. DRIEDGER: That is right.

Of course under section 17 the board itself can review, change or alter an order and if it did file an order, and if it did alter it, then presumably the board would also file it in the court to make the record complete.

Senator BRUNT: Are these orders you speak of reviewed by the Governor in Council?

Mr. DRIEDGER: I do not think so. I do not think in the normal course of events they would even be filed in court. On the question of review I may begin by saying that innumerable legislative attempts have been made to exclude the court from any jurisdiction over orders that are made by, shall we say, administrative tribunals. You will find provisions in provincial statutes, in statutes of the Parliament of Canada, where the legislature has attempted to bar the court. You have an example of that type of thing in the Railway Act itself where in subsection 9 of section 53 it is provided that no order, decision or proceeding of the board shall be questioned or reviewed, restrained or removed by prohibition, injunction, certiorari or any other process or proceeding in our courts. Now, that is a fairly common provision.

Senator HIGGINS: There is no appeal from the Workmen's Compensation Board?

Mr. DRIEDGER: That is what it says. But if anyone thinks that the legislatures have thereby ousted the jurisdiction of the courts, they underestimate the ingenuity of our judiciary, because the courts do find a way of attacking and challenging these orders. For example, you may say the board had no jurisdiction, and there is not an order, so the court can review it.

Senator BRUNT: If there is not an order, there is nothing to review.

Mr. DRIEDGER: The court will review the instrument that has been issued by the board. But, in any event, in preparing this legislation we did not try to oust the jurisdiction of the courts. Our reasoning was somewhat along this line.

First, a decision of the board on facts alone should be the end of the matter. After all, this board hears the evidence; it is a specialized board, operating in a technical field, and if it decides a question of fact, that should stand. If the board makes a decision that is wrong in law, that should be open to appeal to the Supreme Court of Canada. If the board acted without jurisdiction in the issuance of an order, it should be subject to appeal to the Supreme Court of Canada, as provided for in section 18.

Now so far as the prerogative writs are concerned—that is writs of *certiorari*, prohibition or *mandamus*—we first tried to give exclusive jurisdiction to the Exchequer Court of Canada. Otherwise, a litigant, or a dissatisfied customer if you like, could make an application in the Supreme Court of British Columbia for a writ of *certiorari*, and if refused there, he could go to Alberta, Saskatchewan, Manitoba and so on across the country; in other words, the board exists and carries on its purposes in every province of Canada, and wherever it has officials, its proceedings could be challenged in the Superior Court of that province.

We did not think that was a proper way of proceeding. We felt that if one wanted to challenge an order of a board that had jurisdiction throughout Canada, he should be able to do it in a court which has jurisdiction through Canada. Section 19(2) therefore confers upon the Exchequer Court of Canada exclusive jurisdiction in relation to these prerogative writs. You can still go to the court for such a writ; that has not been changed.

By subsection 3 we have restricted the right of the Exchequer Court to review a decision of the order of the board.

First, if an appeal is taken on a question of law, it cannot be reviewed on that ground because it has to be taken under section 18. Secondly, if it is a question of jurisdiction, it cannot be reviewed under subparagraph (b), because there again the appeal must be taken under section 18.

An appeal cannot be taken on a question of fact, because you cannot challenge a decision of the board on fact; a decision of the board on fact is intended to be final. You may ask, what is left? A good deal is left.

There are the grounds upon which these decisions are usually challenged and set aside, for instance, by *certiorari*, namely, that the board has failed to observe the fundamental principles of justice; that the board has not given you a fair hearing, that it has not done what the statute requires it to do, that it has not acted judicially. If the board should fail in any such respect, then you have your remedy by way of the appropriate writ, *certiorari*, prohibition or *mandamus* to the Exchequer Court.

We have not, as was done in the Railway Act, attempted to oust the courts. The only restrictions we have placed are that the judicial remedy is confined to one court, and that the decision of the board as to facts is final. Apart from that, we have not in this bill taken away from any person any of the ordinary judicial remedies which he would have with respect to a tribunal of this kind.

Senator BRUNT: With respect to an appeal in my case of the 300 million feet of gas a day, all you would have to do is allege that the board had not acted judicially.

Mr. DRIEDGER: You might not have a right to attack an order of the board and take your appeal to the Supreme Court of Canada, but if you felt that the board had not observed the fundamental principles of justice, it would be open to you to attack a decision of the board by an appropriate writ to the Exchequer Court.

Senator BRUNT: That could only be done after the cabinet reviewed it.

Mr. DRIEDGER: It would depend on what kind of order it is. There are many kinds of orders.

Senator BRUNT: In certain circumstances you would have to wait until the Governor in Council reviewed it.

Mr. DRIEDGER: That might be so in those cases where an order of the board is subject to approval by the Governor in Council.

Senator BRUNT: And then where do you go?

Mr. DRIEDGER: As you gentlemen will appreciate, I do not want to express an opinion on what you could or could not do in specific circumstances, but I do say that this section is an innovation, and it does not attempt to take away any ordinary legal rights and remedies. It restricts them to some extent, but it leaves them there and you can pursue them just as you have always done.

Senator McDONALD (*Kings*): To a layman, that sounds very reasonable.

Mr. DRIEDGER: We have tried to be reasonable.

Senator McDONALD (*Kings*): It seems to be an improvement.

Mr. DRIEDGER: As I have said, section 19 is an innovation—one we conceived ourselves. We believe it to be fair, and at the same time it protects the board and the public.

Senator BRUNT: You don't know how it will work?

Mr. DRIEDGER: We don't know how it will work, but we hope it will work as we expect it to.

Senator BURCHILL: There is a difference between this legislation and the Railway Act in respect of an appeal to the Governor in Council on a question of fact?

Mr. DRIEDGER: Yes. Under the Railway Act orders or decisions are appealable to the Governor in Council. Such a right of appeal does not exist under this bill.

Senator BURCHILL: And a decision of the board on fact is final?

Mr. DRIEDGER: A decision of the board on fact is final.

Senator HIGGINS: If you claimed that the board had no jurisdiction, your right of appeal would be to the Supreme Court of Canada?

Mr. DRIEDGER: If you allege the board had no jurisdiction you would have to proceed by way of appeal to the Supreme Court of Canada under section 18.

Senator BRUNT: And if you allege the board was not judicial, you would have to take the other method.

Mr. DRIEDGER: You would proceed by way of a prerogative writ in the Exchequer Court. Then, if you did not like the decision of the Exchequer Court, you could appeal to the Supreme Court of Canada.

The CHAIRMAN: Sections 15, 16, 17, 18 and 19—carried.

We stopped at the consideration of section 47. Perhaps we could complete this part of the bill before we adjourn.

Mr. FRASER: Section 47 has no counterpart in the Pipe Lines Act, but is modelled almost exactly on section 3 (3) of the Exports of Power and Fluids Act, which deals with the revocation of export and import licences. Suspension is not mentioned in the latter act, although provision is made in section 7 for fines to be imposed on all those who violate any provisions of the act or the regulations thereunder.

Section agreed to.

The CHAIRMAN: Section 48—Compliance with conditions and act.

Mr. FRASER: Section 48 has no counterpart in existing energy legislation. Subject, of course, to any terms and conditions which may state otherwise, all certificates shall continue in force indefinitely, so long as the holder complies with the act, the regulations thereunder, and any lawful order of the Board.

Section agreed to.

The CHAIRMAN: Section 49—Exemptions.

Section agreed to.

Senator BRUNT: Section 49 is put in so that these short pipe lines that might happen to cross a provincial boundary could be exempt?

Mr. FRASER: I am not sure that particular case was in mind. This is modelled on section 37 of the Pipe Lines Act. I don't recall exactly the intent that went into the provision of that section, except this, that it may not involve the public interest if a pipe line company proposes to extend its line a short distance, and it seemed too bad to require that the company should have to go through all the procedure in order to get a very small addition to its pipe line facilities, to which no one was objecting.

Senator McDONALD: This is up to 25 miles?

Mr. FRASER: That is right, sir. As the bill went through the other place there was provision for exempting such greater distances as the Governor in Council might approve, or something to that effect, but those words on amendment were struck out.

Senator HIGGINS: Does that mean that a person with a line less than 25 miles can construct without any permission under section 25(1)?

Mr. FRASER: No. The Board may make an order to exempt such a case if in the view of the Board circumstances justify such an order.

Senator HIGGINS: They may dispense with advertising, and all that?

Mr. FRASER: That is right. This would be in cases where the Board concludes on examining the elements of the case that there is no public interest involved, no purpose in holding a hearing and going through all the formalities.

Section carried.

Senator ASELTINE: I move that we adjourn sine die.

Senator BURCHILL: Before we adjourn, I would like to ask Mr. Fraser a question on section 85 on the matter of regulations. Paragraph (b) speaks of "the duration of licences, not exceeding twenty-five years". Does that mean twenty-five operating years? From the time you make application there might be a period of one, two or three years getting ready.

Senator BRUNT: I have an amendment to propose when we come to that section, which would add these words—and you can think about it: "from a date to be fixed in the licence".

Mr. FRASER: If I may answer your question first, sir, without derogating in any way from what Senator Brunt has suggested, the intent clearly is yes. As the minister said in introducing the bill in the other place, it is deemed desirable to allow such length of licence for gas pipe lines, gas export pipe lines, as may be necessary to enable those lines to be financed. Now, it often happens, as you apparently very well know, sir, that it takes two or three years to get a project to the operating stage after applying for a certificate or for an export licence, and it is clearly inconsistent with the purposes of the act and its licencing provisions to so reduce the operation of the licence; therefore my answer is a very definite yes, it is the intent to give a twenty-five years clear run.

The committee adjourned sine die.

